

House Bill 574

By: Representatives Willard of the 49th, Lindsey of the 54th, Smith of the 129th, Chambers of the 81st, Ralston of the 7th, and others

A BILL TO BE ENTITLED
AN ACT

To amend Article 8 of Chapter 11 of Title 9 of the Official Code of Georgia Annotated, relating to provisional and final remedies and special proceedings under the "Georgia Civil Practice Act," so as to provide for offers of judgment; to provide that in certain circumstances, when an offer is rejected, the offeree shall be liable for certain attorney's fees and expenses of litigation; to provide for practice and procedure; to provide for related matters; to provide for an effective date and applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 8 of Chapter 11 of Title 9 of the Official Code of Georgia Annotated, relating to provisional and final remedies and special proceedings under the "Georgia Civil Practice Act," is amended by inserting in place of Code Section 9-11-68, which is reserved, a new Code Section 9-11-68 to read as follows:

"9-11-68.

(a)(1) In any civil action for damages filed in the courts of this state, if a defendant files an offer of judgment which is not accepted by the plaintiff within 30 days, the defendant shall be entitled to recover reasonable attorney's fees and expenses of litigation incurred by the defendant or on the defendant's behalf pursuant to a policy of liability insurance or other contract from the date of filing of the offer of judgment if the final judgment is one of no liability or the final judgment obtained by the plaintiff is less than 80 percent of such offer of judgment.

(2) If a plaintiff files a demand for judgment which is not accepted by the defendant within 30 days and the plaintiff recovers a final judgment in an amount greater than 120 percent of such demand for judgment, the plaintiff shall be entitled to recover reasonable attorney's fees and expenses of litigation incurred from the date of the filing of the demand for judgment.

1 (b) Any offer of judgment or demand for judgment made pursuant to this Code section
2 shall:

3 (1) Be in writing, be sent to the party or attorney to the address of record, and state that
4 it is being made pursuant to this Code section;

5 (2) Identify the party or parties making the proposal and the party or parties to whom the
6 proposal is being made;

7 (3) Identify generally the claim or claims the proposal is attempting to resolve;

8 (4) State with particularity any relevant conditions of the offer of judgment or demand
9 for judgment;

10 (5) State the total amount of the proposal for settlement and state with particularity all
11 nonmonetary terms of the proposal;

12 (6) State with particularity the amount proposed to settle a claim for punitive damages,
13 if any; and

14 (7) State whether the proposal includes attorney's fees or other expenses of litigation and
15 whether attorney's fees or other expenses of litigation are part of the legal claim.

16 (c) An award of attorney's fees and expenses of litigation made pursuant to this Code
17 section shall be decided upon by the trier of fact in a bifurcated deliberation following the
18 verdict on liability and damages in the case in chief upon consideration of the following:

19 (1) The then-apparent merit or lack of merit in the claim at the time the offer or demand
20 for judgment was made;

21 (2) The number and nature of offers made by the parties;

22 (3) The closeness of questions of law and fact at issue;

23 (4) Whether the party making the offer or demand for judgment had unreasonably
24 refused to furnish information necessary to evaluate the reasonableness of such offer;

25 (5) If the action is one for personal injury pursuant to Title 51, whether the offer of
26 judgment by the defendant was greater than 90 percent of the outstanding medical
27 expenses incurred by the plaintiff at the time of the making of the offer of judgment; and

28 (6) The amount of the reasonable attorney's fees and expenses of litigation that the
29 person making the offer or demand for judgment incurred as a result of the litigation
30 being prolonged after making the offer.

31 (d)(1) Any award of expenses of litigation or attorney's fees to the defendant shall be set
32 off against a final award of judgment for the plaintiff. Where such expenses of litigation
33 or attorney's fees total more than the final judgment, the court shall enter final judgment
34 for the defendant against the plaintiff for the amount of the expenses of litigation and
35 attorney's fees awarded under this Code section, less the amount of the plaintiff's award.

36 (2) Any award of expenses of litigation or attorney's fees to the plaintiff shall be added
37 by the court to the final judgment for the plaintiff.

1 (e) If an offer of judgment or demand for judgment is rejected, neither an offer of
2 judgment nor a demand for judgment shall be admissible in the present litigation or any
3 subsequent litigation, except as provided for by this Code section.

4 (f) If the parties to a civil action have agreed by contract to the manner in which attorney's
5 fees and expenses of litigation shall be handled between them in a civil action, then the
6 terms of the contract shall apply and this Code section shall not apply to such action."

7 **SECTION 2.**

8 It is the intention of the General Assembly that this Act control over any conflicting
9 provisions of any other Act enacted at the 2005 session of the General Assembly. It is
10 specifically the intention of the General Assembly that the provisions of this Act control over
11 any conflicting provisions of SB 3 from the 2005 session of the General Assembly and that
12 new Code Section 9-11-68 be as provided in this Act rather than as provided in SB 3.

13 **SECTION 3.**

14 This Act shall become effective upon its approval by the Governor or upon its becoming law
15 without such approval and shall apply with respect to actions pending on that date as well as
16 actions filed on or after that date.

17 **SECTION 4.**

18 All laws and parts of laws in conflict with this Act are repealed.